

SENATE BILL NO. 512  
INTRODUCED BY J. SHOCKLEY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PROBATE LAWS; CLARIFYING THE DUTIES OF THE PERSONAL REPRESENTATIVE; CLARIFYING DISTRICT COURT JURISDICTION OVER A PERSONAL REPRESENTATIVE; AUTHORIZING A DISTRICT COURT JUDGE TO RESTRICT SELF-DISTRIBUTIONS BY A PERSONAL REPRESENTATIVE; REVISING THE PROCEDURE FOR THE DISALLOWANCE OF CLAIMS AGAINST AN ESTATE; REQUIRING THE CLERK OF DISTRICT COURT TO NOTIFY THE DISTRICT COURT JUDGE IF AN ESTATE IS NOT CLOSED WITHIN 2 YEARS; PROVIDING FOR THE REDUCTION IN FEES FOR A PERSONAL REPRESENTATIVE WHO DOES NOT CLOSE AN ESTATE IN A TIMELY MANNER; AND AMENDING SECTIONS 72-3-601, 72-3-613, 72-3-631, 72-3-805, AND 72-3-1015, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 72-3-601, MCA, is amended to read:

**"72-3-601. Time of accrual of duties and powers -- power of executor prior to appointment -- ratification.** (1) (a) The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the person appointed which that are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter after appointment. The duties of a personal representative are as specified in this chapter, including but not limited to:

(i) proceeding expeditiously to administer, distribute, and close the estate; and

(ii) acting as a fiduciary as provided in 72-3-610;

(b) A personal representative shall comply with the requirements of 72-3-1015 regarding closing the estate within 2 years and is subject to a denial or limitation of fees if the estate is not closed in a timely manner. By accepting appointment, a personal representative consents to the jurisdiction of the court as provided in 72-3-511. The district court has plenary personal jurisdiction of a personal representative, including a nondomicilliary personal representative, with respect to all matters relating to the estate in order to ensure compliance with the provisions of this chapter.

(2) Prior to appointment, a person named as executor in a will may carry out written instructions of the decedent relating to his the decedent's body, funeral, and burial arrangements.

(3) A personal representative may ratify and accept acts on behalf of the estate done by others where

when the acts would have been proper for a personal representative."

**Section 2.** Section 72-3-613, MCA, is amended to read:

**"72-3-613. Transactions authorized for personal representative.** (1) Except as restricted by this code or subsection (2) of this section or as otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in 72-3-901, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

~~(1)~~(a) retain assets owned by the decedent pending distribution or liquidation, including those in which the representative is personally interested or ~~which~~ that are otherwise improper for trust investment;

~~(2)~~(b) receive assets from fiduciaries or other sources;

~~(3)~~(c) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as the personal representative may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

~~(a)~~(i) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

~~(b)~~(ii) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

~~(4)~~(d) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

~~(5)~~(e) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including money received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments that would be reasonable for use by trustees generally. If the personal representative is authorized to invest funds in United States obligations, the personal representative may invest in these obligations either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, ~~{15 U.S.C. 80a-1 through 80a-64}~~, as amended, if:

~~(a)~~(i) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

~~(b)~~(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

~~(6)~~(f) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

~~(7)~~(g) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

~~(8)~~(h) (i) subdivide, develop, or dedicate land to public use;

(ii) make or obtain the vacation of plats and adjust boundaries;

(iii) adjust differences in valuation on exchange or partition by giving or receiving considerations; or

(iv) dedicate easements to public use without consideration;

~~(9)~~(i) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

~~(10)~~(j) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

~~(11)~~(k) with the consent of the heirs or devisees or the court, abandon property when in the opinion of the personal representative it is valueless or is so encumbered or is in condition that it is of no benefit to the estate;

~~(12)~~(l) vote stocks or other securities in person or by general or limited proxy;

~~(13)~~(m) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

~~(14)~~(n) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate, but the personal representative is liable for any act of the nominee in connection with the security so held;

~~(15)~~(o) insure the assets of the estate against damage, loss, and liability and the personal representative against liability as to third persons;

~~(16)~~(p) borrow money with or without security to be repaid from the estate assets or otherwise and advance money for the protection of the estate;

~~(17)~~(q) with the consent of the heirs or devisees or the court, effect a fair and reasonable compromise with any debtor or obligor or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, the personal representative may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets

from the owner ~~thereof~~ of the assets in satisfaction of the indebtedness secured by lien.

~~(18)(r)~~ pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

~~(19)(s)~~ (i) sell or exercise stock subscription or conversion rights; or

(ii) consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

~~(20)(t)~~ allocate items of income or expense to either estate income or principal, as permitted or provided by law;

~~(21)(u)~~ (i) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of the personal representative's administrative duties;

(ii) act without independent investigation upon their recommendations; and;

(iii) instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

~~(22)(v)~~ prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of the personal representative's duties;

~~(23)(w)~~ sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit and with or without security for unpaid balances; ~~provided, however,~~ However, a personal representative may not, without prior court approval in a supervised proceeding, either directly or indirectly purchase any property of the estate that the personal representative represents, ~~nor~~ or be interested in the sale. All sales must be fairly conducted and made for the best price obtainable.

~~(24)(x)~~ continue any unincorporated business or venture in which the decedent was engaged at the time of death in the same business form, including a sole proprietorship, partnership, or limited liability company, unless otherwise ordered by the court in a formal proceeding initiated by an interested person on the basis that continuation of the business is not in the best interests of the estate or its beneficiaries;

~~(25)(y)~~ incorporate any business or venture in which the decedent was engaged at the time of death;

~~(26)(z)~~ satisfy and settle claims and distribute the estate as provided in this code.

(2) A district court judge may issue an order prohibiting a personal representative from making a self-distribution from the estate unless the distribution is made with the permission of the judge or the distribution is made as part of the closing of the estate."

**Section 3.** Section 72-3-631, MCA, is amended to read:

**"72-3-631. Compensation of personal representative.** (1) A personal representative is entitled to reasonable compensation for services. The compensation may not exceed 3% of the first \$40,000 of the value of the estate as ~~reported~~ reportable for federal estate tax purposes and 2% of the value of the estate in excess of \$40,000 as ~~reported~~ reportable for federal estate tax purposes. However, a personal representative is entitled to a minimum compensation of the lesser of \$100 or the value of the gross estate.

(2) In proceedings conducted for the termination of joint tenancies, the compensation of the personal representative may not exceed 2% of the interest passing.

(3) In proceedings conducted for the termination of a life estate, the compensation allowed the personal representative may not exceed 2% of the value of the life estate if it is terminated in connection with a probate or joint tenancy termination. If a life estate is terminated separately, the personal representative's compensation may not exceed 2% of the value of the estate, except that it may not be less than \$100.

(4) If there is more than one personal representative, only one compensation is allowed.

(5) The court may allow additional compensation for extraordinary services. The additional compensation may not be greater than the amount that is allowed for the original compensation.

(6) If the will provides for the compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to compensation under the terms of this section. A personal representative also may renounce the right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

(7) If a personal representative fails, without good cause, to close the estate in a timely manner, the compensation otherwise allowable to the personal representative as provided in this section may be limited or denied by the court as provided in 72-3-1015."

**Section 4.** Section 72-3-805, MCA, is amended to read:

**"72-3-805. Allowance and disallowance of claims -- interest on allowed claims.** (1) As to claims presented in the manner described in 72-3-804 within the time limit prescribed in 72-3-803, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes ~~his~~ a decision concerning the claim, ~~he~~ the personal representative shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative

is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than 60 days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on ~~his~~ a claim for 60 days after the time for original presentation of the claim has expired has the effect of a notice of ~~allowance~~ disallowance.

(2) After allowing or disallowing a claim, the personal representative may change the allowance or disallowance as provided in this section. The personal representative may change the allowance to a disallowance, in whole or in part, prior to payment, but not after allowance by a court order or judgment or an order directing payment of the claim. The personal representative shall notify the claimant of the change to disallowance, and the disallowed claim is then subject to bar as provided in subsection (1). The personal representative may change a disallowance to an allowance, in whole or in part, until it is barred under subsection (1). After it is barred, it may be allowed and paid only if the estate is solvent and all successors whose interests would be affected consent.

(3) Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow, in whole or in part, any claim or claims presented to the personal representative or filed with the clerk of the court in due time and not barred by subsection (1). Notice in this proceeding ~~shall~~ must be given to the claimant, the personal representative, and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.

(4) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

(5) Unless otherwise provided in any judgment in another court entered against the personal representative, an allowed claim bears interest at the legal rate for the period commencing 60 days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case the claim bears interest in accordance with that provision."

**Section 5.** Section 72-3-1015, MCA, is amended to read:

**"72-3-1015. Estate to be closed within two years.** (1) If an estate has not been closed within 2 years from the date of appointment of the personal representative, the ~~supreme court administrator~~ clerk of court shall notify the district court judge ~~thereof~~. The judge shall order the personal representative and ~~his~~ the personal representative's attorney to appear before the court and show cause why the estate has not been closed.

(2) (a) If, after the show cause hearing, the judge determines that good cause does not exist for failure

to close the estate, the judge may make an order directing that the estate be closed within 30 days and, subject to subsection (2)(b), order that the personal representative and his the personal representative's attorney receive no fee or other compensation from the estate.

(b) The judge may authorize only partial compensation from the estate to the personal representative or the personal representative's attorney. If the personal representative has already received payment in excess of the amount allowed by the judge, the personal representative may be required to pay the excess to the estate."

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